

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

David Lee

Write the full name of each plaintiff.

20 CV 2034

(Include case number if one has been assigned)

-against-

Donald Trump, the President of the United States

**Petitioner's Third Emergency
Motion for Temporary Restraining
Order and/or Preliminary Injunction**

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

STATEMENT OF FACTS

Introduction

1. The plaintiff David Lee is a resident of New York County of the State of New York of Chinese origin. The plaintiff invited his mother and parents-in-law (families) for a family visit in the Spring of 2020. All of them are from Teochew region of Guangdong Province and Chinese citizens with valid US visitor visas.
2. On January 31 the defendant Donald Trump, President of the United States, issued a presidential action “Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus” (the Chinese ban), which forbids any foreign citizens who lived in mainland China in the past 14 days to enter the United States.
3. Due to the Chinese ban, the plaintiff’s families have to cancel their trip to the United States and cannot reunite with the plaintiff.
4. The Chinese ban states that “any alien whose entry would not pose a significant risk of introducing, transmitting, or spreading the virus, as determined by the CDC Director, or his designee” can enter the United States. The plaintiff contacted CDC on Feb 4, 2020 via telephone. However, they said CDC does not grant waivers to enter the United States to anyone, and asked the plaintiff to contact the United States Embassy in China, which is under the Department of States.
5. The plaintiff contacted the United States Embassy in China on the same day via email. However, they also said they cannot give waivers to enter the United States.
6. The Chinese ban states that “any alien whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their designees” can enter the United States. The plaintiff contacted congressman Jerry Nadler of New York for help on Feb 20, 2020. The congressman’s office contacted the

Department of States on behalf of the plaintiff, but the Department of States said they do not issue waivers to the travel ban.

7. On March 4 the plaintiff asked the congressman Nadler's office to request travel ban waivers from CDC. This is second time the plaintiff tried to obtain waivers through CDC. On March 18, CDC refused to issue waivers, but they said they "anticipate that things will change moving forward as the numbers of infected in China continue to go down".
8. However, as of today (May 2, 2020), even after the number of active cases in China is smaller than 1000, the travel ban against Chinese people is still in effect.
9. In the contrary, people from many other countries, including Turkey, Russia, Israel, Singapore, India, Japan, and Saudi Arabia, are not banned from entering the US. Each of these countries has much smaller population but has thousands or tens of thousands of active coronavirus cases.

The Situation of the COVID-19 in China

10. An unknown pneumonia disease, which was later named COVID-19, was first discovered in Wuhan on December 16, 2019.
11. On December 27, 2019, a new type of coronavirus (the coronavirus), later named SARS-COV-2, was identified as the cause of COVID-19.
12. On December 31, 2019, the Chinese government informed the World Health Organization (WHO) about COVID-19.
13. On January 3, 2020, the Chinese government informed the United States directly about COVID-19.
14. On January 6, 2020, the Chinese researchers mapped and published the genome of the coronavirus.
15. On January 20, 2020, Chinese government officially confirmed that the coronavirus can transmit from human to human.

16. In order to stop the transmission, from January 20 onwards, the Chinese government requires everyone to wear mask in public, especially surgical and N95 masks if they can get one. The Chinese government also ordered an extension of the Chinese New Year holidays, strict travel restrictions, and many other orders to reduce activity and transmission of the coronavirus.
17. From January 23 onwards, the Chinese government ordered strict quarantine orders forbidding most people from leaving Wuhan City and Hubei Province.
18. The Chinese government also conducted a huge amount of mandatory coronavirus testing. By March 5, 2020, more than 15 million coronavirus tests have been conducted.
19. There were 50333 past cases confirmed in Wuhan, a metropolitan with about 10 million people during the time of the outbreak. In other words, about 0.5% of the population in Wuhan were confirmed COVID-19 cases. Due to the limitation of medical resources, there are people who were infected but not tested and confirmed.
20. A research conducted by Imperial College London shows that there are about 1000 to 9000 people in Wuhan were infected by the coronavirus in mid-January. This research is based on exported cases and travel patterns.
21. On January and February, countries including the United States, Singapore and Japan evacuated citizens from Wuhan. All evacuees were tested. From the official evacuee data from the United States, Singaporean and Japanese governments, researchers estimate about 0.5% to 2% of the population in Wuhan were infected at the peak of the epidemic there
22. The quarantine, testing, mask wearing and social distancing orders slowed down or stopped the spread of the coronavirus to other provinces of China and other countries. Because of all these measures, COVID-19 has never caused any considerable outbreak in other province of China.

23. In the plaintiff's families' home Guangdong province, a province with more than 113 million population, has only 1588 confirmed cases and 8 death. There are only 13 active cases left, except for the 8 death patients, all other patients have recovered. Most of the cases are imported cases from Hubei Province or from outside China, or their close contacts.
24. In the plaintiff's families' home Teochew region within Guangdong, a region with 15 million population, there are only 48 past confirmed cases. All of them have recovered. 45 of them are imported cases or close contact of imported cases from Hubei Province. 2 cases are imported from the UK. The remaining case is a close contact of an imported case from Nigeria. There were no locally transmitted cases reported ever in the Teochew region. There are ZERO active case and only ONE asymptomatic case right now, which is currently in quarantine after entering China. All the plaintiffs' contacts confirmed the fact that there was no spread of COVID-19 in the Teochew region.
25. COVID-19 is also controlled in other provinces of China. As of today, there are only 838 active COVID-19 cases and 989 confirmed asymptomatic coronavirus carriers in China. Most of them are imported cases from new epicenters like Western Europe, Russia, North America, and Africa, or close contact of imported cases. Most cases are located in coastal and border provinces. Hubei Province in Central China, the original epicenter, has ZERO active case right now.

The COVID-19 Situation in Countries other than China and the Travel Bans

26. Many other countries started to have COVID-19 outbreaks from February.
27. On Feb 29, 2020, the President issued an order banning visitors from Iran (the Iranian ban).

28. Not until March 11, days after the plaintiff filed the original complaint, the defendant issued a presidential order banning non-US travelers from Schengen region from entering the United States (the European ban).
29. The European ban was not issued with the same standard as the travel ban targeting Chinese people and Iranian people. The European travel ban was issued almost 2 weeks after the Iranian travel ban, even though the COVID-19 outbreaks in Italy and Iran started almost at the same time and progressed almost at the same pace.
30. On the day the European travel ban was issued, there were already 10283 confirmed COVID-19 cases in Italy. In comparison, there were only 393 cases in Guangdong and only 593 cases in Iran at the times Guangdong people and Iranian people were banned from entering the US respectively. If we factor in the population in three places, the discrimination shown here is even more appalling.
31. The discrimination and delay of the European travel ban have real consequences. As of today (May 2, 2020) there are more than 1 million confirmed coronavirus cases in the United States. The Greater New York region, where the plaintiff lives and the court is located, has become the new world epicenter of COVID-19. The region has more than 400,000 confirmed coronavirus cases, almost half of the total number of coronavirus cases in the United States. It caused huge suffering to the plaintiff, the judge, and all other New Yorkers alike.
32. There are multiple researches from accredited research institutes confirming that the direct source of the outbreaks in Greater New York region and the Eastern United States in general is Europe. There are researches using coronavirus RNA lineage analysis and mathematical modelling on travel patterns. Both types of research point to the same conclusion: the racial discrimination and the delay of the European travel ban caused larger outbreaks in the Greater New York and Eastern United States comparing to the Western United States.

33. The actual scale of the coronavirus outbreak in the Eastern United States is probably much larger than the confirmed case numbers suggest. A research by Massachusetts General Hospital based on antibody survey showed that about 1/3 of the population in Chelsea, Massachusetts had been infected by the coronavirus by early April. A similar research, backed by the New York State Government, shows that about 1/5 of the New York City residents have been infected by the coronavirus.
34. As of today (May 2, 2020), the crude fatality ratio of coronavirus patients in New York State is 7.6%. As comparison, the crude fatality ratio of coronavirus patients in the plaintiff's families' home Guangdong Province is 0.5%, and the crude fatality ratio in South Korea is 2.3%. The difference in the crude fatality rate is caused by lack of testing for patient without severe symptoms in the United States, which implies an actual infection number matching the estimation from the antibody surveys.

The defendant's response to the COVID-19 epidemic in the US

35. Starting from January, the US federal government evacuated Americans living in Hubei. Initially the US federal government plan to release the evacuees in San Francisco International Airport without quarantine. Only after protests, the federal decided to quarantine the evacuees in military bases.
36. The quarantines of evacuees and the first confirmed cases in the US are not properly conducted. A research showed that most of the coronaviruses in Seattle, WA region are descendants of the coronaviruses from the first identified COVID-19 case in the US.
37. The defendant has been downplaying the severity of the COVID-19 outbreaks in the US since January, except for the racism motivated Chinese travel ban. As of today, the defendant still advocates against social distancing measures.
38. For about 6 weeks from mid-January, the United States federal governments forbid private companies to develop and conduct coronavirus tests. During the time the federal

government is only conducting a minimal amount of coronavirus tests, some people even died from COVID-19 without getting any tests.

39. The defendant has been hiding facts and scientific discoveries about the coronavirus. On Jan 24, Chinese researchers sponsored by Chinese government confirmed the discovery of infectious asymptomatic carriers. On Jan 28, Chinese government officially acknowledge the research. On Jan 30, researchers from Germany also confirmed infectious asymptomatic carriers. However, CDC, FDA, and the defendant personally are downplaying the existence of infectious asymptomatic carriers until April 3. Before April 3, people with no symptom are asked not to wear masks. The plaintiff and plaintiff's wife got ridiculed, blamed, and shamed for suggesting people to wear masks before April. Even today, people who haven't advanced to the late stage of the disease cannot get tested or treatments.

40. On Feb 8, the Chinese government officially confirmed that COVID-19 can spread through aerosol. In simple English, it means the virus can spread in air. However, as of today, the US federal government is still denying this scientific discovery, asking people only to wear cloth masks, which is effective to block droplets but ineffective to block aerosol.

41. Instead of acknowledging scientific discoveries like the Chinese government, the defendant is suggesting not only unproven but also dangerous treatment method like using hydroxychloroquine or injecting disinfectants.

The Defendant Inciting Anti-Asian Hate Crimes

42. Even though the defendant did nothing to help American fighting the spread of coronavirus, the defendant has been inciting racial hatred to shift blame to Chinese and Asian American people.

43. The defendant has called the coronavirus “Chinese virus” both verbally and using his Twitter account @RealDonaldTrump and the official white house account @WhiteHouse.
44. Because of the defendant’s action, there are huge surge in anti-Asian hate crimes in the United States. In addition to the fear of the coronavirus like all other New Yorkers, the plaintiff and the plaintiff’s family in the US are afraid of hate crimes and have to stay at home for months. We feel huge amount of fear and anxiety every time we go out to get groceries or go to hospitals.

The Plaintiff and His Family Situation in the US

45. The plaintiff’s wife is pregnant and with due day in mid-May 2020.
46. The plaintiff will be working fulltime as a senior software engineer to support the family and the plaintiff’s wife is a fulltime premed student and working hard to become a doctor to save lives. The plaintiff and the plaintiff’s wife eagerly need the plaintiff’s parents and/or parents-in-laws to help with the newborn.
47. The plaintiff’s wife suffered very severe postpartum depression after her last childbirth, she is likely to experience similar difficulties this time.
48. Before the plaintiff’s wife immigrated to the United States, the plaintiff’s wife was arrested and jailed by the Chinese government because she advocated for the welfare of the people in her hometown against the government during a severe typhoon and flood. She suffered severe PTSD after the event. This event is the reason she decided to move to the United States. However, the recent discriminative actions and the mishandling of the COVID-19 disasters by the defendant is astonishingly similar to the Chinese Communist Party. The event reminds the plaintiff’s wife about the prosecution in China during the last natural disaster she experienced. She began to have this kind of PTSD episodes again.

49. The action of the defendant is also causing the plaintiff and the plaintiff's wife to question the decision to live in the United States. Especially the plaintiff's wife, who is questioning why she decided to come to the US and regretting everything she has done in the US in the past 7 years. She is suffering huge depression because of that. She hopelessly said "in China I was punished because of my opinion, but here I am discriminated just because of my skin color. I can change my opinion, but how can I change my skin color?"
50. All three issues combined, the plaintiff's wife also eagerly needs spiritual support from her parents, who she trusts the most.

Argument

51. The delay of bans on Italy, and the lack of travel bans on Russia, Turkey, and many other countries, which are more serious hit than China, especially the plaintiff's home Teochew region, proves that the Chinese travel ban is discriminative by country of origin in nature.
52. As of today, coronavirus is contained in Hubei Province for weeks, and there is ZERO active case in both Hubei Province and the plaintiff's families' home Teochew region. But the travel ban is still in effect. There are actually more than 1000 times more COVID-19 cases in the US than China. Thus, the Chinese travel ban is even more discriminative in nature right now.
53. The other actions by the defendant are escalating the COVID-19 outbreaks inside the US. It also proves that the travel bans of Chinese are mainly motivated by discrimination on race, national origin and religion, rather than stopping the spread of coronavirus.
54. The denial of the plaintiff's waiver application also proves that the President and the Federal Government intend to ban all Chinese residents from entering the US, regardless of coronavirus risk.

55. The President has been attacking Japanese people since 1980s and Chinese people since he started his presidential campaign in 2015. It shows he has been extremely racist against Asian people for about 40 years. Many of his other previous actions and speeches show that he is discriminative towards all people of color in general.
56. The increased level of baseless attacks on China and Asian Americans by the defendant in the past 8 weeks provides more evidences showing the defendant is extremely racist against Asians in general, and that the travel ban against Chinese people is malicious and racially motivated in nature.
57. The defendant has publicly claimed that data from China is not trustworthy because Chinese are not trustworthy as the President of the United States. However, as shown above, based on researches conducted by Massachusetts General Hospital and Imperial College London, and official data from Japanese Government, Singaporean Government, New York State Government, and the United State Federal governments, the COVID-19 numbers in the United States are actually less reliable than the COVID-19 numbers from Chinese government, especially numbers for places outside Hubei. Moreover, as shown above, the defendant and the federal government have spread more lies and denying scientific discoveries about COVID-19 much longer than Chinese government did. Therefore, the fact that some of the data in this complaint is from the Chinese government will not damage its validity.
58. The Chinese ban's discriminative nature violates the plaintiff equal protection rights of the Due Process Clause of the Fifth Amendment.
59. The Chinese ban's discriminative nature violates the plaintiff's equal protection rights of the Fourteenth Amendment.
60. The Chinese ban's discriminative nature also violates the Administrative Procedure Act.
61. As the President of the United States, the defendant is using terms like "Chinese virus" officially to incite racial hatred toward Asian American, which is an even more obvious

violation of the Fifth Amendment, Fourteenth Amendment and the Administrative Procedure Act.

Additional Argument for Preliminary Injunction

62. The harms to the plaintiff and the plaintiff's wife are irreparable. The plaintiff and the plaintiff's wife are expecting a newborn in two weeks and cannot relocate easily. With all the travel restrictions the plaintiff cannot leave the United States. But with a President inciting racial hatred against Asian Americans, the plaintiff and the plaintiff's wife live in fear in the United States every day. The plaintiff has to stay in the house as long as possible and apply for firearm license for self-protection.
63. The balance of hardships tips in the plaintiff's favor. The hardship of the plaintiff and the plaintiff's family without the waivers is tremendous. But the hardship to remove the tweets and stop using terms like "Chinese virus" is basically zero. To remove the tweets, the defendant only needs to say "OK" when asked about the preliminary injunction.
64. The public interest would not be disserved by the issuance of the injunction. In the contrary, the injunction would advance the public interest. Internally, it will stop inciting hate crimes in the United States and advance unity of American people of all backgrounds. Externally, currently Chinese researchers are working on understanding and fighting COVID-19, Chinese companies are selling protection gears, drugs, and ventilators to the United States, many individuals and companies in China are donating money and equipment to the United States. I don't see insulting all Chinese people is helping the American public interest. Even if the United States is at war with China, (which is not true,) inciting racism to justify war just like what Adolf Hitler did in World War II is not helping American public interests. Therefore, under any circumstances, issues the injunction would advance the public interest.

Prayer for Relief

The plaintiff prays for a preliminary injunction and/or temporary restraining order to order the defendant to remove or replace all tweets with “Chinese virus” from @realDonaldTrump, @POTUS, and @WhiteHouse Twitter accounts, and stop using such terms as the President of the United States in the future, online or offline, verbally or written.



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